Before the Federal Communications Commission Washington, D.C. 20554

| In the Matter of | | | | | | |
|---|---------|---------|----------|----------|---|--|
| CSX TRANSPORTATION, INC. | | | | |) | |
| Licensee of Conventional Industrial/Business Pool | | | | | | |
| Radio | Service | Station | WPKH966, | Calhoun, |) | |
| Georgia | a | | | |) | |

MEMORANDUM OPINION AND ORDER

Adopted: February 20, 2003 Released: February 24, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

- 1. *Introduction*. By this Memorandum Opinion and Order, we, on our own motion, address a licensing issue involving CSX Transportation, Inc. (CSX). It has come to our attention that the above-captioned authorization issued to CSX contains a frequency outside of the Industrial/Business Pool. Based on the information before us, we believe the inclusion of such frequency on the license for Conventional Industrial/Business Pool Station WPKH966, Calhoun, Georgia to be a typographical error. For the reasons set forth below, we initiate a proceeding to modify CSX's license for Station WPKH966 by replacing frequency 131.4150 MHz at Location 2 with frequency 161.4150 MHz.
- 2. *Background*. On December 5, 1996, CSX filed a manual application for a new license,¹ which was granted on February 26, 1997 under Call Sign WPKH966. The station was authorized to operate on nine frequencies in the 160 MHz range,² including frequency 161.4150 MHz, at each of six locations, except that Location 2 was authorized to use frequency 131.4150 MHz instead of frequency 161.4150 MHz. The other eight frequencies authorized at Location 2 are the same as the frequencies at the other locations
- 3. Discussion. We believe that the assignment of frequency 131.4150 MHz to Location 2 is a typographical error. Frequency 131.4150 MHz is not listed in either in the 1996 Railroad Radio Service Frequency Table or the current Industrial/Business Pool Frequency Table.³ Frequency 131.4150 MHz is allocated to the Aviation Services.⁴ Due to the age of this authorization, records concerning the application are not readily available. Therefore, it is unclear whether the typographical error was made on CSX's application or on the authorization. Nevertheless, we conclude CSX's application should not have been granted to the extent that such action authorized operation on a frequency outside the Industrial/Business Pool. We further believe that the correct frequency is 161.4150 MHz, which is allotted to the Industrial/Business Pool and is assigned to Station WPKH966's other locations.

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¹ FCC File No. D063717.

² 160.3500 MHz, 160.3950 MHz, 160.7850 MHz, 160.8900 MHz, 161.1000 MHz, 161.2650 MHz, 161.3700 MHz, 161.4150 MHz, and 161.4300 MHz.

³ See 47 C.F.R. § 90.91 (1996); 47 C.F.R. § 90.35 (2002).

⁴ See 47 C.F.R. § 87.173.

- 4. As discussed above, either the coordination of CSX's application or the grant of CSX's authorization was defective because frequency 131.4150 MHz is not allocated for Industrial/Business Pool operations. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.⁵ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.⁶ In this connection, we note that proposed modification would serve the public interest by preserving the existing coverage areas of affected parties and preventing harmful interference, while not unduly disrupting CSX's operations.
- 5. Consequently, we propose to modify CSX's license for Station WPKH966 to replace frequency 131.4150 MHz at location 2 with 161.4150 MHz. In accordance with Section 1.87(a) of the Commission's Rules,⁷ we will not issue a modification order until CSX has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, CSX must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.⁸ If no protest is filed, CSX will have waived its right to protest the modification and will be deemed to have consented to the modification.
- 6. Conclusion. For the reasons stated above, we conclude that the grant of CSX's application was defective to the extent that it authorized operations on frequency 131.4150 MHz. Accordingly, we propose the modification of CSX's license for Station WPKH966 to replace frequency 131.4150 MHz at location 2 with 161.4150 MHz.
- 7. ACCORDINGLY, IT IS PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Service Station WPKH966, Calhoun, Georgia, held by CSX Transportation, Inc., BE MODIFIED by replacing frequency 131.4150 MHz at location 2 with frequency 161.4150 MHz.
- 8. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to CSX Transportation, Inc., 5220 Belfort Road, Suite 300, Jacksonville, FL 32256, Attn: T. C. Miller Comm. Dept. J 958.

⁷ 47 C.F.R. § 1.87(a).

⁵ 47 U.S.C. § 316(a)(1).

⁶ *Id*.

⁸ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry Chief, Public Safety and Private Wireless Division Wireless Telecommunications Bureau